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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**
13 **(Hon. William Q. Hayes)**

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 vs.

17 GLENDA CASTILLO ABALOS,

18 Defendant.
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) Case No. 08 CR 1557- WQH

) POINTS AND AUTHORITIES IN
) SUPPORT OF MOTION TO COMPEL
) DISCOVERY AND FOR AN EXTENTION
) TO FILE ADDITIONAL MOTIONS

) Date: June 23, 2008

) Time: 2:00 p.m.
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MOTION TO COMPEL DISCOVERY

22 GLENDA CASTILLO ABALOS moves for the production by the government of the
23 following items. This request is not limited to those items that the prosecutor knows of, but
24 rather includes all discovery listed below that is in the custody, control, care, or knowledge of
25 any "closely related...investigatory [or other] agencies" under United States v. Bryan, 868 F.2d
26 1032, 1040 (9th Cir. 1989), cert. denied, 493 U.S. 858 (1989):

1 **(1) The Defendant's Statements** Under Fed. R. Crim. P. 16 (a)(1)(A) the defendant is
2 entitled to disclosure all copies of any written or recorded statements made by the defendant; the
3 substance of any statements made by the defendant which the government intends to offer in
4 evidence at trial; any recorded testimony of the defendant before the grand jury; any response by
5 the defendant to interrogation; the substance of any oral statements which the government
6 intends to introduce at trial, and any written summaries of the defendant's oral statements
7 contained in the handwritten notes of the government agent; any response to any Miranda
8 warnings which may have been given to the defendant (See United States v. McElroy, 697 F.2d
9 459 (2d Cir. 1982)); and any other statements by the defendant that are discoverable under Fed.
10 R. Crim. P. 16(a)(1)(A). The Advisory Committee Notes as well as the 1991 amendments to
11 Rule 16 make it clear that the Government must reveal all the defendant's statements, whether
12 oral or written regardless of whether the Government intends to introduce those statements;
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14 **(2) Arrest Reports, Notes and Dispatch Tapes** The defendant also specifically requests
15 that all arrest reports, notes and dispatch or any other tapes that relate to the circumstances
16 surrounding her arrest or any questioning, if such reports have not already been produced in their
17 entirety, be turned over to her. This request includes, but is not limited to, any rough notes,
18 records, reports, transcripts or other documents in which statements of the defendant or any other
19 discoverable material is contained. This is all discoverable under Fed. R. Crim. P. 16(a)(1)(A)
20 and Brady v. Maryland, 373 U.S. 83 (1963). See also United States v. Johnson, 525 F.2d 999 (2d
21 Cir. 1975), cert. denied, 424 U.S. 920 (1976); United States v. Lewis, 511 F.2d 798 (D.C. Cir.
22 1975); United States v. Pilnick, 267 F. Supp. 791 (S.D.N.Y. 1967); Loux v. United States, 389
23 F.2d 911 (9th Cir. 1968), cert. denied, 393 U.S. 867 (1968). Arrest reports, investigator's notes,
24 memos from arresting officers, dispatch tapes, sworn statements, and prosecution reports
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1 pertaining to the defendant are available under Fed. R. Crim. P. 16(a)(1) (C), Fed. R. Crim. P.
2 26.2 and 12(i);

3 **(3) Reports of Scientific Tests or Examinations** Pursuant to Fed. R. Crim. P. 16(D),
4 Ms. ABALOS requests the reports of all tests and examinations conducted upon the evidence in
5 this case, including but not limited to the scientific chemical testing done upon the drugs seized
6 in this case to determine if it was indeed (cocaine) and any fingerprint testing done upon any
7 evidence seized in this case, that is within the possession, custody, or control of the government,
8 the existence of which is known, or by the exercise of due diligence may become known, to the
9 attorney for the government, and which are material to the preparation of the defense or are
10 intended for use by the government as evidence in chief at the trial;

11 **(4) Brady Material** The defendant requests all documents, statements, agents' reports,
12 and tangible evidence favorable to the defendant on the issue of guilt and/or which affects the
13 credibility of the government's case. Impeachment as well as exculpatory evidence falls within
14 Brady's definition of evidence favorable to the accused. United States v. Bagley, 473 U.S. 667
15 (1985); United States v. Agurs, 427 U.S. 97 (1976);

16 **(5) Any Information that May Result in a Lower Sentence under the United States**
17 **Sentencing Guidelines (U.S.S.G.)** As discussed above, this information is discoverable under
18 Brady v. Maryland, 373 U.S. 83 (1963). This request includes any cooperation or attempted
19 cooperation by the defendant, as well as any information that could affect any base offense level
20 or specific offense characteristic under Chapter Two of the U.S.S.G. Also included in this
21 request is any information relevant to a Chapter Three adjustment, a determination of the
22 defendant's criminal history, or any other application of the U.S.S.G.;

23 **(6) The Defendant's Prior Record** Evidence of prior record is available under Fed. R.
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1 Crim. P. 16(a)(1)(B);

2 **(7) Any Proposed 404(b) Evidence** Evidence of prior similar acts is discoverable under
3 Fed. R. Crim. P. 16(a)(1)(C) and Fed. R. Evid. 404(b) and 609. In addition, under Fed. R. Evid.
4 404(b), "upon request of the accused, the prosecution . . . shall provide reasonable notice in
5 advance of trial . . . of the general nature . . ." of any evidence the government proposes to
6 introduce under Fed. R. Evid. 404(b) at trial. The defendant requests that such notice be given
7 three weeks before trial in order to give the defense time to adequately investigate and prepare
8 for trial;
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10 **(8) Evidence Seized** Evidence seized as a result of any search, either warrantless or with
11 a warrant, is discoverable under Fed. R. Crim. P. 16(a)(1)(C);
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13 **(9) Request for Preservation of Evidence** The defendant specifically requests that all
14 dispatch tapes or any other physical evidence that may be destroyed, lost, or otherwise put out of
15 the possession, custody, or care of the government and which relate to the arrest or the events
16 leading to the arrest in this case be preserved. California v. Trombetta, 467 U.S. 479 (1984);
17 Arizona v. Youngblood, 488 U.S. 51 (1988); U.S.C.A. Const. Amend. 14. This request includes,
18 but is not limited to, any samples used to run any scientific tests, any narcotics, and any evidence
19 seized from any third party. It is requested that the government be ordered to question all the
20 agencies and individuals involved in the prosecution and investigation of this case to determine if
21 such evidence exists, and if it does exist, to inform those parties to preserve any such evidence;
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23 **(10) Tangible Objects** The defendant requests, under Fed. R. Crim. P. 16(a)(1)(C), the
24 opportunity to inspect and copy as well as test, if necessary, all other documents and tangible
25 objects, including photographs, books, papers, documents, photographs of building or places or
26 copies of portions thereof which are material to the defense or intended for use in the
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1 government's case-in-chief, or were obtained from or belong to the defendant;

2 **(11) Evidence of Bias or Motive to Lie** The defendant requests any evidence that any
3 prospective government witness is biased or prejudiced against the defendant, or has a motive to
4 falsify or distort his or her testimony. Pennsylvania v. Ritchie, 480 U.S. 39 (1987); United States
5 v. Strifler, 851 F.2d 1197 (9th Cir. 1988), cert. denied, 489 U.S. 1032 (1989);

7 **(12) Impeachment Evidence** The defendant requests any evidence that any prospective
8 government witness has engaged in any criminal act, whether or not resulting in a conviction,
9 and whether any witness has made a statement favorable to the defendant. See Fed. R. Evid. 608,
10 609 and 613. Such evidence is discoverable under Brady v. Maryland, *supra*. See United States v.
11 Strifler, *supra* (witness' prior record); Thomas v. United States, 343 F.2d 49 (9th Cir. 1965)
12 (evidence that detracts from a witness' credibility);

14 **(13) Evidence of Criminal Investigation of Any Government Witness** The defendant
15 requests any evidence that any prospective witness is under investigation by federal, state or local
16 authorities for any criminal conduct. United States v. Chitty, 760 F.2d 425 (2d Cir. 1985) cert.
17 denied, 474 U.S. 945 (1985);

19 **(14) Evidence Affecting Perception, Recollection, Ability to Communicate, or Truth**
20 **Telling** The defense requests any evidence, including any medical or psychiatric report or
21 evaluation, tending to show that any prospective witness' ability to perceive, remember,
22 communicate, or tell the truth is impaired; and any evidence that a witness has ever used
23 narcotics or other controlled substance, or has ever been an alcoholic. United States v. Strifler,
24 851 F.2d 1197 (9th Cir. 1988); Chavis v. North Carolina, 637 F.2d 213, 224 (4th Cir. 1980);

26 **(15) Witness Addresses** The defendant requests the name and last known address of
27 each prospective government witness. See United States v. Napue, 834 F.2d 1311 (7th Cir.
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1 1987); United States v. Tucker, 716 F.2d 576 (9th Cir. 1983) (failure to interview government
2 witnesses by counsel is ineffective); United States v. Cook, 608 F.2d 1175, 1180 (9th Cir. 1979)
3 (defense has equal right to talk to witnesses), cert. denied, 444 U.S. 1034 (1980). The defendant
4 also requests the name and last known address of every witness to the crime or crimes charged
5 (or any of the overt acts committed in furtherance thereof) who will not be called as a
6 government witness. United States v. Cadet, 727 F.2d 1453 (9th Cir. 1984);

8 **(16) Name of Witnesses Favorable to the Defendant** The defendant requests the name
9 of any witness who made an arguably favorable statement concerning the defendant or who could
10 not identify him or who was unsure of his identity, or participation in the crime charged. Jackson
11 v. Wainwright, 390 F.2d 288 (5th Cir. 1968); Chavis v. North Carolina, 637 F.2d 213, 223 (4th
12 Cir. 1980); Jones v. Jago, 575 F.2d 1164, 1168 (6th Cir.), cert. denied, 439 U.S. 883 (1978);
13 Hudson v. Blackburn, 601 F.2d 785 (5th Cir. 1979), cert. denied, 444 U.S. 1086 (1980);

15 **(17) Statements Relevant to the Defense** The defendant requests disclosure of any
16 statement that may be "relevant to any possible defense or contention" that he might assert.
17 United States v. Bailleaux, 685 F.2d 1105 (9th Cir. 1982);

19 **(18) Jencks Act Material** The defense requests all material to which defendant is entitled
20 pursuant to the Jencks Act, 18 U.S.C. § 3500, reasonably in advance of trial, including dispatch
21 tapes. A verbal acknowledgment that "rough" notes constitute an accurate account of the
22 witness' interview is sufficient for the report or notes to qualify as a statement under §3500(e)(1).
23 Campbell v. United States, 373 U.S. 487, 490-92 (1963). In United States v. Boshell, 952 F.2d
24 1101 (9th Cir. 1991), the Ninth Circuit held that when an agent goes over interview notes with
25 the subject of the interview the notes are then subject to the Jencks Act. The defense requests
26 pre-trial production of Jencks material to expedite cross-examination and to avoid lengthy
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1 recesses during trial;

2 **(19) Giglio Information** Pursuant to Giglio v. United States, 405 U.S. 150 (1972), the
3 defendant requests all statements and/or promises, express or implied, made to any government
4 witnesses, in exchange for their testimony in this case, and all other information which could
5 arguably be used for the impeachment of any government witnesses;(20) Personnel Records of
6 Government Officers Involved in the Arrest The defendant requests all citizen complaints and
7 other related internal affairs documents involving any of the immigration officers or other law
8 enforcement officers who were involved in the investigation, arrest and interrogation of him,
9 pursuant to Pitchess v. Superior Court, 11 Cal. 3d 531, 539 (1974). See Cal. Penal Code §§
10 832.7, 832.8, Cal. Evid. Code §§ 1043, 1045. Because of the sensitive nature of these
11 documents, defense counsel will not be able to procure them from any other source.
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13 **(21) Government Examination of Law Enforcement Personnel Files** Ms. ABALOS
14 requests that the government examine the personnel files and any other files within its custody,
15 care or control, or which could be obtained by the government, for all testifying witnesses,
16 including testifying officers. Ms.ABALOS requests that these files be reviewed the government
17 for evidence of perjurious conduct or other like dishonesty, or any other material relevant to
18 impeachment, or any information that is exculpatory, pursuant to its duty under United States v.
19 Henthorn, 931 F.2d 29 (9th Cir. 1991), cert. denied, 510 U.S. 933 (1993); Kyles v. Whitley, 514
20 U.S. 419 (1995). The obligation to examine files arises by virtue of the defense making a demand
21 for their review: the Ninth Circuit in Henthorn remanded for in camera review of the agents' files
22 because the government failed to examine the files of agents who testified at trial. This Court
23 should therefore order the government to review all such files for all testifying witnesses and turn
24 over any material relevant to impeachment or that is exculpatory to Ms. ABALOS prior to trial;
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1 and(23) Expert Summaries Written summaries of all expert testimony that the government
2 intends to present under Federal Rules of Evidence 702, 703 or 705 during its case in chief,
3 written summaries of the bases for each expert's opinion, and written summaries of the experts'
4 qualifications. Fed. R. Crim. P. 16(a)(1)(E).
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6 II.

7 8 **DEFENDANT REQUESTS THAT THE COURT GRANT AN** 9 **EXTENSION FOR THE FILING OF ADDITIONAL MOTIONS** 10 **AND THAT THE COURT SET A FURTHER HEARING DATE**

11 Based on the information available to the defendant at the time of the filing of this
12 motion, none of the discovery has not yet been made available. Because items of discovery, such
13 as video surveillance tapes, video interrogation tapes, and photographs of the alleged criminal
14 activity, have not yet been made available, it is requested that the matter be continued to allow
15 counsel sufficient time to review the discovery and prepare for motions.
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17 **CONCLUSION**

18 For the foregoing reasons, Ms. ABALOS respectfully requests the Court
19 grant the above motions.
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21 Dated: June 5, 2008

/s/ Paul D. Turner

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